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Supreme Court of the United States

October Term, 1976

No. 75-946

CITY OF MADISON, JOINT SCHOOL DISTRICT NO. 8, CITY OF MADISON, VILLAGES OF MAPLE BLUFF AND SHOREWOOD HILLS, TOWNS OF MADISON, BLOOMING GROVE, FITCHBURG AND BURKE AND ITS AGENT THE BOARD OF EDUCATION, CITY OF MADISON JOINT SCHOOL DISTRICT NO. 8,

Appellants,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION AND MADISON TEACHERS INCORPORATED,

Appellees.

On Appeal from the Supreme Court
of the State of Wisconsin

BRIEF AMICUS CURIAE FOR THE NATIONAL EDUCATION ASSOCIATION

ROBERT H. CHANIN
DAVID RUBIN
National Education Association
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

Attorneys for National Education Association Amicus Curiae

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BRIEF AMICUS CURIAE FOR THE NATIONAL EDUCATION ASSOCIATION

INTEREST OF AMICUS*

The National Education Association (NEA) is the largest teacher organization in the United States, with a membership of approximately 1.7 million educators, most of whom are teachers in public educational institutions.

* The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk of the Court pursuant to Rule 42(2) of the Rules of this Court.

Many NEA members and affiliates are entitled to engage in collective bargaining with their employer school boards. The appellee in this case, Madison Teachers, Inc., is an NEA affiliate. It has been selected pursuant to Wisconsin law as exclusive bargaining representative of the teaching personnel employed by appellant City of Madison Joint School District No. 8.

The NEA frequently participates as *amicus curiae* in cases involving the rights of teachers and the interests of NEA affiliates. This brief is filed to present the view of *amicus* that there is no conflict between the First Amendment and the principle of exclusive bargaining in this case and that it is unnecessary for this Court to decide which would prevail if a conflict ever should develop.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision of the Wisconsin Supreme Court in this case represents an accommodation between the policies reflected in two state statutes. One is the Municipal Employment Relations Act, which requires municipal employers, including school boards, to bargain collectively with—and only with—the representatives selected by the majority of their employees, on the subjects of wages, hours, and conditions of employment.[1] The other is the Wisconsin Anti-Secrecy Act, which provides that no formal government action of any kind shall be introduced, deliberated upon, or adopted at a closed meeting.[2] The accommodation that

[1] Wis. Stat. § 111.70 (1974).

[2] After an initial declaration of policy the Act states:

> "Except as provided in sub.(4), all meetings of governmental bodies shall be open sessions. No discussion of any matter shall be held and no action of any kind, formal or informal, shall be introduced, deliberated upon, or adopted by a governmental body in closed session, except as provided in sub.(4).

Wis. Stat. § 66.77(3) (Supp. 1975). One of the exceptions in subparagraph (4) allows closed sessions for, *inter alia*, discussion of the employment or compensation of any public employee. *Id.* § 66.77(4)(b). Another allows closed sessions for

> "Deliberating or negotiating on the purchasing of public property, the investing of public funds, or conducting other public business which for competitive or bargaining reasons require closed sessions."

Id. § 66.77(4)(d).

the Wisconsin court adopted in this case is challenged on the ground that it abridges the First Amendment rights of certain employees.

The Wisconsin court's first decision on these two statutes was *Board of School Directors* v. *Wisconsin Employment Relations Commission*, 42 Wis. 2d 637, 168 N.W.2d 92 (1969). In that case the court held that the Anti-Secrecy Act applied to the process of collective bargaining between a municipal employer and the representative of its employees. Although the court approved an interpretation that allowed negotiations to occur in private session, it held that the school board cannot take final action on the bargaining proposals *"until they are made public and discussed in an open public meeting."* *Id.* at 653, 168 N.W.2d at 100 (emphasis in original). In the same case the court decided that a representative of a minority union was not entitled at such a meeting to make a statement on the subjects of collective bargaining, even though other members of the public were allowed to speak. Because the meeting constituted the final step in the bargaining process, the court held that allowing the minority representative to participate would be inconsistent with the policies underlying the state's exclusive bargaining principle.

The same statutory problem recurred in the instant case. At the culmination of a 10-month negotiation process the School Board held a meeting and opened the floor for comment on the collective bargaining proposals. The president of the majority union made a statement on its behalf and

presented a petition signed by 1300 or 1400 teachers, urging the Board and the Union to resume negotiations and reach an agreement. App. 105. Over the union's objections the Board also allowed a teacher, Albert Holmquist, to make a statement on behalf of an *ad hoc* minority group urging rejection of one of the union's proposals. App. 104-06. The Wisconsin Supreme Court found that the meeting in question was "the necessary and final step in the 'negotiation' process between the school board and the majority teachers' union." App. 112. Under these circumstances, the court held, the Board violated the statutory principle of exclusive recognition by allowing Holmquist to participate in the negotiation process.

Neither the Wisconsin court's interpretation of the state statutes nor its decision that the meeting in this case was part of the negotiation process is open for question here.[3] The only issue presented by this appeal is whether that accommodation of the two statutes, which requires the school board to hold a public meeting as a part of the negotiation process, and prohibits participation by employees other than representatives of the majority union, violates the constitutional rights of those employees who may wish to make a statement at that meeting as individuals or on behalf of a minority faction.

In Part I of this brief, we will show that the First Amendment does not guarantee access to the podium at a particular school board meeting. The restricted access prescribed by the Wisconsin Supreme Court in this case is reasonable in light of the policy behind the required meeting and the State's strong interest in assuring stable labor relations in municipal employment.

In Part II of this brief, we suggest that it is unnecessary

[3] *E.g., Hortonville Joint School Dist. No. 1* v. *Hortonville Education Association,* 44 U.S.L.W. 4864, 4866 (June 17, 1976); *Groppi* v. *Wisconsin,* 400 U.S. 505, 507 (1971).

on this appeal for the Court to grapple with the broader constitutional questions raised by the order of the Wisconsin Employment Relations Commission.

I. THE FIRST AMENDMENT DOES NOT GUARANTEE ACCESS TO THE PODIUM FOR INDIVIDUAL EMPLOYEES AND MINORITY REPRESENTATIVES AT A SCHOOL BOARD MEETING THAT IS PART OF THE COLLECTIVE BARGAINING PROCESS.

The State of Wisconsin has chosen a common theme for its Municipal Employment Relations Act. Employees are guaranteed the right to choose a labor organization to represent them in negotiations with their employer. The employer in turn must negotiate with an organization chosen by a majority, and it may not negotiate with any other group or individual. This principle of exclusive recognition not only enables the employees to present a united front on questions of wages, hours, and working conditions, but it also protects the municipal employer from the competing demands of splinter groups and the administrative burdens of dealing with more than one bargaining agent. It was the judgment of the Wisconsin legislature that this system would "encourage voluntary settlement" of labor disputes, Wis. Stat. §111.70(6), and that it would allow the municipal employer "to act for the government and good order of the municipality . . . [and] to assure orderly operations and functions within its jurisdiction," *id.* §111.70(1)(d).

The other provision of Wisconsin law crucial to this case is the declaration in the Anti-Secrecy Act that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental affairs and the transaction of governmental business." Wis. Stat. §66.77(1). Together the two statutes require an open meeting at the culmination of the collective bargaining process, at which, under the Anti-Secrecy Act the public may be invited to comment on the bargaining proposals but, under the Employment Relations

Act, no employee may be allowed to participate except as the authorized spokesman for the majority union. The School Board contends in this case that it will violate the First Amendment rights of its employees if it is required to limit participation in this manner.

The state laws involved here, as interpreted by the Wisconsin Supreme Court, do not violate the First Amendment. These laws do not touch the right of a speaker to gather an audience around him in an appropriate public place and express his views to those who are willing to listen. The issue instead is whether there is a right to address a public body, a school board, which has convened a meeting for the purpose of conducting government business.

In a public place that is traditionally open for free expression, such as a street or a park, the State "may not select which issues are worth discussing or debating." *Police Department of the City of Chicago* v. *Mosley,* 408 U.S. 92, 96 (1972). It may not exclude certain speakers on the basis of their identity or their views. *Fowler* v. *Rhode Island,* 345 U.S. 67 (1953); *Niemotko* v. *Maryland,* 340 U.S. 268 (1951). And it cannot make decisions based upon the government's view of the relative value of what different speakers have to say. *Erznoznik* v. *City of Jacksonville,* 422 U.S. 205 (1975). In such places the State may only make "reasonable time, place, and manner regulations applicable to all speech irrespective of content." *Id.* at 209.

This Court has recognized that all of these rules cannot apply to every occasion and every medium that may lend itself to expressive conduct. The Court has held repeatedly that First Amendment standards depend upon the nature and the use of the place and the medium for which the right of access is claimed. *E.g., Greer* v. *Spock,* 44 U.S.L.W. 4380 (Mar. 24, 1976); *Hudgens* v. *NLRB,* 44 U.S.L.W. 4281, 4285 (Mar. 3, 1976); *Southeastern Promotions, Ltd.* v. *Conrad,* 420 U.S. 546, 557 (1975); *Police Department of*

the City of Chicago v. *Mosley, supra; Grayned* v. *City of Rockford,* 408 U.S. 104, 116 (1972); compare *Adderley* v. *Florida,* 385 U.S. 39 (1966), and *Cox* v. *Louisiana,* 379 U.S. 559 (1965), with *Edwards* v. *South Carolina,* 372 U.S. 229 (1963). *See also Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.,* 44 U.S.L.W. 4686, 4693 n.24 (May 24, 1976).

In *Lehman* v. *City of Shaker Heights,* 418 U.S. 298 (1974), eight members of this Court agreed that in deciding whether the First Amendment guarantees a right of access to a particular place, the Court must assess the nature of the forum, the interests of the speaker and his audience, and the legitimate interests of the public that would be compromised if access for free speech were allowed.[4] If this analysis leads to the conclusion that the place is not a public forum, the state is free to make distinctions among speakers as long as they are reasonable. *See Greer* v. *Spock, supra,* at 4383-84; *Lehman* v. *City of Shaker Heights, supra,* at 303-04 (plurality opinion). In this case there is no public forum and the grounds for the exclusion are reasonable.

The primary purpose of a school board is to run the schools. The time that school board members can spend in public meetings is necessarily limited, and the public interest would not be served by a rule that the board must listen

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[4] The plurality opinion stressed "the nature of the forum and the conflicting interests involved," 418 U.S. at 302, but it took into consideration each of the elements of the formula suggested by the dissent:

> "[T]he Court must assess the importance of the primary use to which the public property or facility is committed and the extent to which that use will be disrupted if access for free expression is permitted."

Id. at 312. The plurality and the dissent thus agreed on the general principle, although they disagreed over its application on the facts of that case.

to everyone who wants to speak.[5] The efficient transaction of government business demands the flexibility to devote the limited time to speakers who can make valuable contributions to the issues at hand. The problems in this regard parallel those of the microwave spectrum, whose physical limitations have led this Court to conclude that there is no First Amendment right to occupy a radio or television channel. *Columbia Broadcasting System, Inc.* v. *Democratic National Committee,* 412 U.S. 94, 101-02 (1973); *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367, 389 (1969); *National Broadcasting Co.* v. *United States,* 319 U.S. 190, 226-27 (1943). As the Court said in *Red Lion, supra,* at 388, and repeated in *Columbia Broadcasting System, supra,* at 101, "it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish." As long as the government acts under reasonable standards for choosing among applicants, it may grant or deny a broadcast license on considerations that are improper where First Amendment guarantees are fully applicable. *Red Lion, supra,* at 394; *National Broadcasting Co., supra,* at 226-27; *cf. Miami Herald Publishing Co.* v. *Tornillo,* 418 U.S. 241 (1974). It thus may require a licensee "to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community." *Red Lion, supra,* at 389; *see id.* at 394. It follows for the same reasons that a school board meeting is not a public forum and the First Amendment does not guarantee a right of access to the podium. Access may be subject to reasonable restrictions so

[5] Many cases of this stripe may end on the observation that the First Amendment does not include a right to require any other citizen to listen to a speaker's views. *Pell* v. *Procunier,* 417 U.S. 817, 821-22 (1974). On the peculiar facts of this case, however, the School Board insists that it would be a willing listener if the State did not forbid it to receive this particular message from this particular speaker at this time and place.

that school business can be conducted in an orderly manner and in the public interest.

Restrictions on subject matter are essential. If the school board invites members of the public to attend its meetings and comment on school business, the invitation does not convert the meeting into an open forum at which anyone may speak on any subject. *See Greer* v. *Spock, supra,* at 4383 n.10. No one would suggest that a school board must spend its meetings listening to speeches about deplorable conditions in the prisons. Or that if its present business is class size, it may not confine the agenda to that subject and refuse to hear those who wish to criticize the principal's use of corporal punishment. Without such restrictions on subject matter the school board could not open a meeting for public comment without losing control over its proceedings.

The board must also be able to make reasonable distinctions among potential speakers.[6] For example, if the issue is whether to consolidate two small schools, the board may want to hear only from the parents and teachers who would be affected by the change. On certain troublesome subjects it may want to get the views of experts, of community leaders, or of other responsible spokesmen without opening the floor to everyone else who would like to speak. On other subjects it may seek representative viewpoints. In a line-by-line debate over a proposed budget, for example, the board might want to have the PTA or some other organization speak for the parents rather than having every interested individual state his view on every item at issue.

In this case the restriction on participation at the school

[6] Of course, there are limits on the distinctions the board may draw. It could not discriminate on the basis of race, religion, political persuasion, or similar grounds. *Cf. Healy* v. *James,* 408 U.S. 169 (1972) (privileges of campus recognition could not be denied SDS because administration disapproved of its political ideas); *Niemotko* v. *Maryland, supra* (use of park could not be denied Jehovah's Witnesses when it was granted to other religious groups).

board meeting is based only on the status of the speaker. There is no distinction between one viewpoint and another. Members of the public may voice any opinion, and employees other than union representatives may not participate either to support or oppose the majority proposals.[7] *Cf. NLRB* v. *Draper Corp.*, 145 F.2d 199 (4th Cir. 1944). The only distinctions are between members of the public and employees, and, with respect to employees, between the designated bargaining agent and everyone else. The Wisconsin Supreme Court's decision that employees as such may not participate in this particular meeting is reasonable in light of the exclusive bargaining relationship between the school board and the majority union, and the role of this meeting in the bargaining process. That decision, though perhaps not the only possible response to the problem, should be respected. *See National League of Cities* v. *Usery*, 44 U.S.L.W. 4974 (June 24, 1976); *Hortonville*

[7] Although certain forms of content discrimination may be forbidden in this context, none is produced by the Wisconsin court's decision in this case. There is neither sympathy nor hostility to any particular point of view, *see Young* v. *American Mini Theatres, Inc.*, 44 U.S.L.W. 4999, 5004 (June 24, 1976) (plurality opinion), nor discrimination among persons similarly situated based upon their beliefs, *see Greer* v. *Spock, supra,* at 4383; *National Broadcasting Co., supra,* at 226. *Cf. Bonner-Lyons* v. *School Committee of the City of Boston,* 480 F.2d 442 (1st Cir. 1973) (parents' group against busing allowed to distribute statement through school facilities; proponents of busing unconstitutionally denied same privilege). For a contrast to the instant case, *see Smetanka* v. *Borough of Ambridge,* 378 F.Supp. 1366 (W.D. Pa. 1974). In that case the borough council passed a resolution to the effect that Mrs. Smetanka would no longer be allowed to speak at council meetings even though all other citizens were allowed to speak without limitation. The court found that Mrs. Smetanka had always conducted herself in an orderly fashion and had not posed any threat to the conduct of the council's business, but the council members had found her criticism annoying. The district court held that the selective exclusion violated the First Amendment.

Joint School Dist. No. 1 v. *Hortonville Education Association, supra,* at 4868.[8]

Under Wisconsin's chosen system for ordering municipal labor relations, the issues are worked out in negotiations between the school board and the organization selected by a majority of the employees. No other employee or organization is entitled to participate in this process, and the majority organization is required to represent the interests of all employees. The negotiations may extend over a period of months while the board and the union trade concessions and explore compromises. At the end of the process, when they have reached or are near tentative agreement, they must present the results to the public. The majority union, as a participant in the negotiations, has a legitimate part to

[8] Various briefs filed by *amici* in this case question the constitutionality of a state's decision to adopt the principle of exclusive bargaining for public employees. This case does not raise such broad issues, as the only question is whether the First Amendment invalidates the Wisconsin court's decision that a school board must restrict minority participation in a particular meeting. Nonetheless, it is curious that anyone would question the principle of majority rule in this context. The First Amendment guarantees no individual a right to bargain with government. Granting a representative of the majority a statutory right to bargain on behalf of all employees does not take away any individual's constitutional rights. Nor does it violate the Equal Protection Clause. The minority union that loses a representation election and the employee who voted for it stand in the same positions as an unsuccessful candidate for Congress and the voter who supported him: they retain their rights to comment generally on public affairs and to petition the Government, but neither suffers constitutional injury because the unsuccessful candidate is denied the privilege of speaking on the Senate floor.

This Court has sustained the principle of exclusive bargaining in private employment, *see J. I. Case Co.* v. *NLRB,* 321 U.S. 332 (1944); *NLRB* v *Jones & Laughlin Steel Corp.,* 301 U.S. 1 (1937); *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U.S. 515 (1937); *Texas & N.O.R.R.* v. *Brotherhood of Ry. & Steamship Clerks,* 281 U.S. 548 (1930), and the principles that supported those rulings are equally applicable here. *See Railway Employes' Department* v. *Hanson,* 351 U.S. 225 (1956); *Local 858, American Federation of Teachers* v. *School District No. 1,* 314 F. Supp. 1069, 1075 (D. Colo. 1970).

play in presenting the total picture to the public. The school board may be unable adequately to explain the union's bargaining proposals to interested citizens. It may prefer to conduct the meeting as a debate, presenting its own side of the negotiations and leaving the union to explain the employee's side. Or it may simply want to be relieved of the burden of answering questions about the union's position.

Individual employees and minority factions occupy an entirely different position. They were not party to the negotiations. They have no part to play in describing the status of the negotiations to the public. Employees who support the union will simply restate what their elected representative has said. On the other hand, dissatisfied employees will attack the tentative agreement either because in their view the union made the wrong trade-offs and compromises or because it conceded too much to the school board. This is exactly what the state sought to avoid by adopting the principle of exclusive bargaining in the first place. Throughout the negotiations the school board is protected from conflicting demands and from the pressures of splinter groups. It is protected from the danger that minority factions will try to compete with each other by making unreasonable bargaining demands.[9] Under the state's chosen system, disputes among employees over their bargaining priorities should be ironed out at the beginning of the process, either at the point of choosing the majority representative or in the early stages of the negotiations. These disputes are to be resolved by majority vote so that the employees can speak with one voice and the school board can deal with them on that basis. *See NLRB* v. *Tanner Motor Livery, Ltd.*, 419 F.2d 216 (9th Cir. 1969).

This system, in the state's judgment, was necessary to produce fruitful negotiations between the school board and

[9] Each of the two alternatives to exclusive bargaining poses the danger of irreconcilable demands upon the employer. "Members only" representation, "if taken seriously and carried out logically, would guarantee maximum instability in the employer-employee relationship. It would be chaotic and impracticable." D. Wollett & R. Chanin, The Law and Practice of Teacher Negotiations 2:14 (1970). Proportionate representation, in which each employee organization is given membership on a joint negotiating council in proportion to its support among the employees, has

> "inherent difficulties . . . which make it much more unstable than a system of exclusive representation by the majority organization. Each of the organizations on the council is caught in a competitive milieu where it must continuously strive to outdo the other organizations in order to hold present members and gain new ones. The minority organization has nothing to lose and everything to gain by taking militant and even irresponsible positions on salaries or personnel policies which it believes will have maximum membership appeal. The majority organization will be forced by considerations of survival to respond to this competition by being equally militant and irresponsible."

Id. at 2:15. The same danger is inherent whenever a minority faction is allowed to participate in the bargaining process.

the majority representative, to the ultimate end of reaching a voluntary agreement. If internal wrangling among employee factions is revived at the end of the bargaining process, at the point where the school board reports the results of the negotiations to the public, it will produce all the problems the state sought to avoid by insulating the earlier stages of the bargaining process, and it may have the additional effect of undermining the results of that process. The irresistible urge to respond to a face-to-face confrontation in an open meeting may lead to actual give-and-take bargaining between the school board and a minority spokesman. The state could conclude that as a class of cases such confrontations at a meeting that is part of the bargaining process would undermine the principle of exclusive bargaining.

Years of experience in the private sector have demonstrated that employers cannot manage their businesses efficiently if they must bargain with individual employees or minority factions as well as the majority representative. In *Emporium Capwell Co.* v. *Western Addition Community Organization,* 420 U.S. 50 (1975), this Court held that the protection given concerted activities by Section 7 of the National Labor Relations Act, 29 U.S.C. §157, did not pro-

tect two employees who tried to pressure their employer to negotiate with them rather than the majority representative about problems of racial discrimination. Despite the "highest priority" given to principles of nondiscrimination, 420 U.S. at 66, the Court's opinion emphasized that fragmentation of the bargaining unit on this issue would endanger the interests of both the employees and the employer, and that an employer could have "strong and legitimate objections to bargaining on several fronts over the implementation of the right to be free of discrimination." *Id.* at 70.

> "An employer confronted with bargaining demands from each of several minority groups would not necessarily, or even probably, be able to agree to remedial steps satisfactory to all at once. Competing claims on the employer's ability to accommodate each group's demands . . . could only set one group against the other even if it is not the employer's intention to divide and overcome them. . . . With each group able to enforce its conflicting demands—the incumbent employees by resort to contractual processes and the minority employees by economic coercion—the probability of strife and deadlock, is high . . . ."

Id. at 67-68.

For the same reason many public employers have adopted the principle of exclusive representation for their employees. The federal government initially experimented with recognition of minority unions under Executive Order 10988 (1962), but abandoned it in 1969 in favor of exclusive recognition for the majority representative. Executive Order 11491 (1969). One of the reasons for the change was that government agencies objected to their obligation to deal with minority unions.

> "Agency experience also has been largely on the negative side. Federal management officials have found that [minority] recognition is no longer meaningful;

> that it encourages fragmentation, creates overlapping relationships, and places an undue administrative burden on management; and that unions with such recognition lack the strength to contribute substantially to stable labor relations."

Study Committee Report and Recommendations, August 1969, Which Led to the Issuance of Executive Order 11491, at 65, in *Labor-Management Relations in the Federal Service* (U.S. Federal Labor Relations Council 1975).

A substantial majority of the states have followed suit in adopting exclusive recognition for their public employees. As of December 1974, thirty-nine states and the District of Columbia had decided either to allow or require exclusive bargaining for public employees. Of these, thirty states and the District of Columbia had exclusive bargaining for teachers.[10] This year at least one other state joined their ranks.[11]

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[10] These states are as follows:

Alabama (teachers), Ala. School Code, L. 1973, Acts No. 1022 and 1023; Alaska (all public employees), Alaska Stat. §§ 14.20.560(a), 23.40.100(b) (1972); California (local government employees, police, firefighters), West's Ann. Gov. Code § 3507 (1961); Connecticut (teachers, local, police, fire), Conn. Gen. Stat. Ann. §§ 7-471(1) (1965), 10-153b(d) (1969); Delaware (all public employees), Del. Code title 14 § 4004 (1970 Cum. Supp.), Del. Code title 19 § 1306 (1965 Supp.).

District of Columbia (teachers [history of de facto recognition] local, police, fire), Exec. Order No. 70-229, June 19, 1970, implemented by ch. 25A of District Personnel Manual; Florida (all public employees), Fla. Stat. § 447.009 (1974); Georgia (fire), Ga. Code Ann. § 54-1305 (1973 Supp.); Hawaii (all public employees), Hawaii Rev. Stat. § 89-8(a) (1970).

Idaho (teachers, fire), Idaho Code § 33-1273 (Cum. Supp. 1972) and § 44-1803 (Cum. Supp. 1970); Illinois (state), Exec. Order No. 6 (Sept. 4, 1973); Indiana (teachers, state, local), Burns Ind. Stat. Ann. § 28-4560(a)(1) (1973 Cum. Supp.), Ind. Code 22-6, §§ 1-13, Ch. 4; Iowa (all public employees), Iowa Acts 107, § 14.1 (1974); Kansas (all public employees), Kan. Stat. Ann. § 72-5415 (1972), § 75-4327 (1973 Cum. Supp.); Kentucky (fire), Ky. Rev. Stat. § 345.040 (1972).

Maine (all public employees), Me. Rev. Stat. Ann. § 967(2) (Cum.

Several court decisions also have noted that exclusive bargaining reduces interunion strife and protects the schools from conflicting demands. *Haukedahl* v. *School District*

Supp. 1973-1974), as amended, Me. Acts ch. 776, § 979-F (1974); Maryland (teachers), Ann. Code Md. Art. 77, § 160(e) (1969); Massachusetts (all public employees), Mass. Gen. Laws Ann. ch. 150E, § 4 (1973); Michigan (all public employees except those in state classified service), Mich. Stat. Ann. § 17.455 (1968).

Minnesota (all public employees except employees of charitable hospitals), Minn. Stat. Ann. §§ 179.63(6), 179.67 (1971); Missouri (state, local, fire), V.A.M.S. § 105.500(2) (1967); Montana (all public employees), Rev. Code Mont. 1947, §§ 59-1603(3) (1973); Nebraska (state, local, police, fire), Neb. Rev. Stat. § 48-838 (1947); Nevada (teachers, local, police, fire), Nev. Rev. Stat. § 288.160(2) (1969); New Hampshire (state, police), N.H. Rev. Stat. Ann. § 273-A:10(IV).

New Jersey (all public employees), N.J. Stat. Ann. § 34:13A-5.3 (1941); New Mexico (employees in state classified service), N.M. State Personnel Board regulations for the conduct of employee-management relations with classified state employees, § IV, as revised Jan. 31, 1975; New York (all public employees), N.Y. Civ. Serv. Law § 207 (1967); North Dakota (teachers), N.D. Cent. Code § 15-38.1-11 (1969); Oklahoma (teachers, local, police, fire), Okla. Stat. Ann. title 11, § 548.4(C)(1) (1974).

Oregon (all public employees), Ore. Rev. Stat. § 243.682 (1963); Pennsylvania (teachers, state, local, police, fire), Pa. Stat. Ann. title 43, § 1101.603 (1970), title 43, § 217.1 (1968); Rhode Island (teachers, state, local, police, fire), Gen. Laws of R.I., §§ 28-7-14 (1941); 28-9.1-5 (1961), 28-9.2-5 (1963), 28-9.3-3 (1966), 28-9.4-4 1967; South Dakota (all public employees), S. Dak. Comp. Laws 3-18-3 (1969); Texas (police, fire), Tex. Rev. Civ. Stat. Ann. art. 5154C-1, § 6 (1973); Vermont (teachers, state, local, police, fire), Vt. Stat. Ann. title 16, § 1991(a) (1969), title 27, § 941(h) (1969), title 22, § 1722(8) (1973).

Washington (teachers, state, local, police, fire), Rev. Code Wash. Ann. §§ 41.56.080 (1967), 28B.52.030 (1971), 28B.16.100 (1971), title 41, § 8 (1975); West Virginia (teachers, state, local, police, fire), Attorney General Opinions 6-29-62, 2-23-66, 6-26-74; Wisconsin (teachers, state, local, police, fire), Wis. Stat. §§ 111.70(4)(d)(1) (1974), 111.83 (1966); Wyoming (fire), Wyo. Stat. § 27-267 (1965).

The December 1974 compilation appears in *Government Employee Relations Report,* Reference File 51:501 et seq. (BNA 1975).

[11] *See* New Hampshire Rev. Stat. Ann. § 273-A:8 (as amended 1976).

No. 108, No. 75 C 3641 (N.D. Ill. May 19, 1976); *Edgewood Federation of Teachers Local No. 3158* v. *Edgewood Independent School District,* Civ. No. SA-74-CA-39 (W.D. Tex. May 7, 1975); *Federation of Delaware Teachers* v. *De La Warr Board of Education,* 335 F. Supp. 385 (D. Del. 1971); *American Federation of Teachers, Local 858* v. *School District No. 1,* 314 F. Supp. 1069 (D. Colo. 1970); *see also Sioux Falls Federation of Teachers* v. *Sioux Falls Independent School Dist.,* LM Dkt 2U, Mem. Dec. (S. Dak. Dept. of Labor, Mar. 24, 1976).

Finally, appellant's additional argument based on the First Amendment right to petition the government does not alter the analysis. Just as there is no First Amendment guarantee that "everyone with opinions or beliefs to express may address a group at any public place and at any time," *Cox* v. *Louisiana,* 379 U.S. 536, 554 (1965), the right to petition the government does not guarantee the right to address a particular meeting of a government body if prescribed procedures do not allow it. *See California Motor Transport Co.* v. *Trucking Unlimited,* 404 U.S. 508, 515 (1972). The Wisconsin Employment Relations Commission expressly noted in this case that individual employees and minority factions could present their views to the school board by written petition, App. 165, and every other avenue of communication remains open to them. *Cf. Pell* v. *Procunier, supra,* at 823-24.

In the circumstances of this case, then, the Wisconsin Supreme Court's interpretation of the applicable statutes does not abridge the First Amendment rights of any employee. There is no guaranteed right to participate in school board meetings, and the distinction required by state law here is a reasonable means for the state to use in ordering its public employee labor relations. A state that places value on achieving stable labor relations through collective bargaining should not be held constitutionally required to pro-

vide a special forum to a minority faction for the purpose of undermining the bargaining process.

II. IT IS UNNECESSARY FOR THIS COURT TO ADDRESS THE BROADER QUESTION RAISED BY THE COMMISSION'S ORDER.

The circumstances of this case fully justify the state court's ruling that the School Board committed a prohibited practice by allowing Holmquist to make a statement at this particular meeting. But the Wisconsin court also affirmed the Commission's cease and desist order, which is considerably broader than the court's reasoning or the circumstances of this case. The order provides that the Board:

> "Shall immediately cease and desist from permitting employes, other than representatives of Madison Teachers Inc., to appear and speak at meetings of the Board of Education, on matters subject to collective bargaining between it and Madison Teachers Inc." App. 108.

By its terms, this order applies not only to public meetings that constitute the final step in the negotiation process, but to any public meeting, regardless of the subject matter.

It may be, in light of the more limited reasons given in support of both the Commission's and the court's decisions, that neither would interpret this order to apply to all school board meetings. Unless the order is narrowed, however, the School Board will have no choice but to comply with its terms and refuse at any meeting to accept statements on subjects of collective bargaining from employees other than the union representative. If the First Amendment requires equal access under any conceivable circumstances, this order would be unconstitutionally overbroad and would have the effect of denying legitimate opportunities to speak along with those that may properly be denied.

To decide whether the order is overbroad, however, would require this Court to speculate about the various circumstances under which employees other than the union representative would wish to discuss the subjects of collective bargaining at school board meetings, and to reach hypothetical judgments whether in all such circumstances the State's interest would justify requiring the employees to speak through the voice of the majority. It is not this Court's practice to decide such questions unnecessarily.

This Court on a number of occasions has remanded cases to state courts for clarification of their judgments.[12] This case is appropriate for that treatment, and we therefore suggest that the judgment below should be vacated and remanded to give the Wisconsin Supreme Court an opportunity to decide whether the order is restricted to the facts of this case, and thus to make it unnecessary for this Court to issue a possibly hypothetical ruling on the scope of the State's authority to regulate the agenda at public meetings.

CONCLUSION

For the foregoing reasons, the judgment of the Wisconsin Supreme Court should be vacated and the case remanded for further proceedings.

Respectfully submitted,

ROBERT H. CHANIN
DAVID RUBIN
National Education Association
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

Attorneys for National Education Association Amicus Curiae

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[12] *E.g., Blackburn* v. *Alabama,* 354 U.S. 393 (1957); *Missouri ex rel. Southern Ry.* v. *Mayfield,* 340 U.S. 1 (1950); *Young* v. *Ragen,* 337 U.S. 235 (1949); *Standard Oil Co.* v. *Johnson,* 316 U.S. 481 (1942); *State Tax Commission* v. *Van Cott,* 306 U.S. 511 (1939); *cf. Minnesota* v. *National Tea Co.,* 309 U.S. 551 (1940); *Honeyman* v. *Hanan,* 300 U.S. 14 (1937).